Filed 7/30/19 In re Jason L. CA5

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

In re JASON L. et al., Persons Coming Under the Juvenile Court Law.	
FRESNO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. DOROTHY L., Defendant and Appellant.	F078571 (Super. Ct. Nos. 17CEJ300259-1, 17CEJ300259-2) **OPINION**

THE COURT[*]

APPEAL from an order of the Superior Court of Fresno County. Gary Green, Judge.

Liana Serobian, under appointment by the Court of Appeal, for Defendant and Appellant.

Daniel C. Cederborg, County Counsel, and Kevin A. Stimmel, Deputy County Counsel, for Plaintiff and Respondent.

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[*] Before Franson, Acting P.J., Smith, J. and DeSantos, J.

Dorothy L. (mother) appeals from the juvenile court's order terminating her parental rights to her now three-year- and 20-month-old sons, Jason L. and K.V., at a Welfare and Institutions Code section 366.26[1] hearing in December 2018. She contends the Fresno County Department of Social Services (department) abused its discretion in denying her request to relinquish her parental rights and the juvenile court erred in denying her request for a hearing under section 361.3 on the issue of relative placement. We affirm.

PROCEDURAL AND FACTUAL SUMMARY

Dependency proceedings were initiated in August 2017 after law enforcement placed a protective hold on then 18-month-old Jason because of mother's neglect. Mother, then seven months pregnant with K.V., and Jason were living with the maternal grandmother and a drug user. There was dog and cat feces at the front door and throughout the bedrooms as well as debris scattered throughout the home. In addition, there was no food. When informed of the protective hold, mother had to be involuntarily detained and placed in a psychiatric facility.

The department was concerned about Jason's safety in mother's care because she exercised poor judgment in her parenting decisions. She suffered from several psychiatric diagnoses that compromised her ability to parent, including moderate intellectual disability and persistent depressive disorder. She was receiving services from Central Valley Regional Center (CVRC), which included independent living skills, but was resistant.

Mother told the social worker she arranged for her cousin, Cheyenne, to adopt the baby. Cheyenne lived in San Diego and planned to come to Fresno the day before mother's October 2017 due date. She identified Julio O. as the baby's father and said he

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[1] Statutory references are to the Welfare and Institutions Code, unless otherwise noted.

used methamphetamine and alcohol and lived in Los Angeles. She denied using drugs or alcohol.

The juvenile court ordered Jason detained pursuant to a dependency petition filed by the department and offered mother parenting, substance abuse, mental health and domestic violence services. The department placed Jason in a foster home. Mother identified Ruben G. as Jason's alleged father but said he was not named on Jason's birth certificate or involved in Jason's care and support.

In late October 2017, the department was notified mother and newborn K.V. were ready to be discharged from the hospital and Cheyenne was there to take the baby. Mother met Cheyenne on social media six months before but had never seen her in person until the day before. Asked why she did not go through an adoption agency, lawyer, or paralegal, mother explained she arranged an "independent adoption" with Cheyenne, although she did not know what that meant and was angry about having to explain it. In addition, mother refused to disclose the name and address of the friend she planned to stay with after her discharge from the hospital, stating the friend did not want Child Protective Services at her house.

Social Worker Julie Donnelly found Cheyenne and her husband Shawn V. and their five-year-old son in mother's hospital room. Shawn was standing in the corner holding the baby. Mother was upset by the department's involvement, stating she was told she could decide who would care for the baby. Mother found Cheyenne on social media and discovered that her mother was Cheyenne's father's second cousin by marriage. She did not believe she could parent two children so close in age and Cheyenne wanted to adopt her son. Donnelly explained the need to investigate and obtained information from Cheyenne and Shawn to initiate a background check. The following day, social workers met with mother to develop a safety plan but were unsuccessful. After determining that voluntary family maintenance services were not appropriate, the social workers decided to file a dependency petition on K.V.'s behalf.

The petition identified Julio O. as K.V.'s alleged father. The department placed K.V. with Jason in foster care.

The juvenile court exercised its dependency over the children in separate hearings conducted in November 2017 and January 2018, and ordered mother to participate in reunification services, including a psychological evaluation to determine whether she could benefit from services. The court denied Ruben and Julio services because of their alleged father status. (§ 361.5, subd. (a).) Their paternity status remained unchanged throughout the proceedings and Julio was never located.

Meanwhile, Cheyenne had begun the Resource Family Approval (RFA) process for relative placement and Jason's care provider was interested in adopting him if mother was unable to reunify with him. Although mother was interested in waiving reunification services, she was on a waiting list for a parenting class and completed the first part of a domestic violence assessment. She did not, however, complete a substance abuse evaluation or enroll in the drug testing program.

Mother began therapeutic supervised visits in January 2018. Her therapist opined she had some parenting skills but was inconsistent and needed constant direction with interacting and bonding. Mother completed a substance abuse assessment and reported using marijuana every month for the prior 17 years. Because she seemed to have difficulty understanding the questions, she was referred to a substance abuse counselor for one-on-one outpatient treatment but did not attend. She requested residential treatment but refused to give up her cell phone or stay for the required 90 days. She was not enrolled in random drug testing, but spot tested for the social worker and tested positive for marijuana.

The department recommended the juvenile court terminate mother's reunification services at the six-month review hearings, which were set for May and July 2018. Jason was reportedly very bonded to his care providers and K.V. appeared to be very comfortable with them. Mother, meanwhile, appeared to be unstable and struggling to be

independent. She was living with acquaintances who forced her to leave their home, requiring her to relocate several times. She was also noncompliant with her CVRC services and fired her case managing team. The department also had the psychologist's report of mother's evaluation, opining that she had a disabling mental disorder, which rendered her incapable of utilizing family reunification services. At a hearing in May, the juvenile court appointed a guardian ad litem for mother.

In August 2018, following a contested six-month review hearing, the juvenile court terminated mother's reunification services as to both children and set a December section 366.26 hearing. Mother did not seek an extraordinary writ from the court's setting order. (Cal. Rules of Court, rule 8.450.)

On November 5, Cheyenne and Shawn had their only visit with the children at the visitation center. Jason focused on the toys and play equipment and had little interaction with Cheyenne and Shawn. Shawn attempted to interact with Jason, but he would not let either adult get close to him. Cheyenne paid more attention to K.V. and frequently picked him up to hold him. He looked around the room and cried but eventually stopped. At the end of the visit, both children were very excited to see their foster parents. Jason ran to them and K.V. reached out for his foster mother.

The department recommended the juvenile court find the children were likely to be adopted and terminate parental rights.

Mother's attorney objected to the department's recommendation to terminate her parental rights at the section 366.26 hearing but did not offer any evidence. Her attorney informed the juvenile court, however, that Cheyenne and Shawn completed the RFA process and argued they should have received relative placement preference. The court asked her what standing they had to assert the placement preference at that stage of the proceedings and whether they ever appeared at the hearings or visited the children. She stated they had not appeared and had one visit. She offered to research the issue of standing to raise the preference and file a section 388 petition if the court were inclined to

continue the hearing. County counsel interjected that there were three stages to the RFA process and Cheyenne and Shawn completed two of the stages. Mother's guardian ad litem concurred the relatives should be considered out of fairness to mother. When the court asked how that would benefit the children, he explained it would allow them a relationship with their relatives.

The juvenile court declined to continue the hearing, finding Cheyenne lacked standing to request placement. The court also found the children were likely to be adopted and terminated parental rights.

DISCUSSION

Mother contends the department ignored her repeated requests to relinquish her parental rights to Cheyenne and violated its statutory obligation under section 361.3 to afford her relative placement preference. She further contends the juvenile court's refusal to conduct a placement hearing to review the department's decisions was error and requires reversal. We find no evidence mother made any significant effort to relinquish the children for adoption and conclude she lacks standing to raise the relative placement preference.

Relinquishment

A parent may voluntarily relinquish a child for adoption and may designate the person with whom the parent intends the child to be placed. (Fam. Code, § 8700, subds. (a) & (f).) There are, however, certain requirements which must be met and procedures with which parents must comply before relinquishment is effective. Those requirements were not satisfied here, nor were appropriate procedures employed.

Family Code section 8700, which governs relinquishment, permits either birth parent to relinquish a child to the department, county adoption agency, or licensed adoption agency for adoption. (Fam. Code, § 8700, subd. (a).) "When accepted, an effective relinquishment is accomplished 'by a written statement signed before two subscribing witnesses and acknowledged before an authorized official' of the State

Department of Social Services (department), county adoption agency or licensed adoption agency. (Fam. Code, § 8700, subd. (a).)" (*In re R.T.* (2015) 232 Cal.App.4th 1284, 1302.) The written "statement is made on a form provided by the department, which contains a section for the name of the agency and the signature of the acknowledging official." (*Ibid.*) "The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department, county adoption agency, or licensed adoption agency." (Fam. Code, § 8700, subd. (f).) " 'At the time the relinquishment document for adoption is signed, the agency shall: [¶] (A) Request the parent to read and sign the [statement of the adoption process] pursuant to Family Code section 8702. [¶] (B) Advise the parent of the provisions of Family Code Section 8701 [(concerning the parent's right to request information on the status of the adoption)]. [¶] (C) Accept the relinquishment by signing the acknowledgement portion of the relinquishment document. [¶] (D) Give the parent a copy of the completed relinquishment document.' " (*In re R.T.*, *supra*, 232 Cal.App.4th at p. 1302.) "The agency accepting the relinquishment must file it with the department within 10 days of the document's signing, unless the parent agrees to a longer holding period. [Citations.] With limited exceptions, the relinquishment is final 10 business days after the department's receipt of the filing. (Fam. Code, § 8700, subd. (e)(1).)" (*Ibid.*)

Here, aside from stating she wanted Cheyenne to adopt the children, mother made no effort through her attorney or guardian ad litem to initiate the relinquishment process. Therefore, she cannot argue the department rejected a relinquishment request that she never made.

Relative Placement Preference

Section 361.3 gives "preferential consideration" to a request for placement by a relative of a child who has been removed from parental custody. (*Id.*, subd. (a).) "Preferential consideration" means that the relative seeking placement shall be the first

placement to be considered and investigated." (*Id*., subd. (c)(1).) The preference applies at the disposition hearing and thereafter "whenever a new placement of the child must be made." (*Id*., subd. (d).) Section 361.3 assures that, when a child is taken from his or her parents' care and requires placement outside the home, an interested relative's application for placement will be considered before a stranger's request. (*Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863.)

"Relative" as defined in the statute is "an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words 'great,' 'great-great,' or 'grand,' or the spouse of any of these persons even if the marriage was terminated by death or dissolution." (§ 361.3, subd. (c)(2).) " 'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).) "The statute does 'not supply an evidentiary presumption that placement with a relative is in the child's best interests' but it does require the social services agency and juvenile court to determine whether such a placement is appropriate, taking into account multiple factors including the best interest of the child, the parents' wishes, and the fitness of the relative." (*In re R.T., supra,* 232 Cal.App.4th at p. 1295, fn. omitted.) "The correct application of the relative placement preference places the relative 'at the head of the line when the court is determining which placement is in the child's best interests.' " (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033.)

Here, as a distant cousin of mother's, Cheyenne was not a relative within the fifth degree to the children. Consequently, she did not qualify for preferential placement.[2]

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[2] For this reason, the cases on which mother relies, *In re R.T., supra,* 232 Cal.App.4th at pages 1295–1299 and *In re Isabella G.* (2016) 246 Cal.App.4th 708, 711–712, are irrelevant as they both involved application of the relative placement preference to relatives as defined in the statute.

Even assuming Cheyenne did qualify, mother lacked standing to assert the placement preference at the section 366.26 hearing.

Standing

"Although standing to appeal is construed liberally, and doubts are resolved in its favor, only a person aggrieved by a decision may appeal. [Citations.] An aggrieved person, for this purpose, is one whose rights or interests are injuriously affected by the decision in an immediate and substantial way, and not as a nominal or remote consequence of the decision." (*In re K.C.* (2011) 52 Cal.4th 231, 236 (*K.C.*).)

Here, mother made no attempt to challenge the termination of her parental rights by rebutting evidence of the children's adoptability, for example, or raising any of the exceptions to adoption provided in section 366.26, subdivision (c)(1)(B). Consequently, she relinquished her interest in the children and cannot show that she was aggrieved. In a factually similar case, the California Supreme Court in *K.C.*, *supra*, 52 Cal.4th 231, held that a father did not have standing to object to his child's placement because he was not an aggrieved party. We find the court's explanation of standing vis-à-vis the relative placement preference instructive for our purposes here.

The child in *K.C.* was removed from the parents and placed with a prospective adoptive family. The juvenile court bypassed reunification services for the parents and set a section 366.26 hearing. The child's grandparents filed a section 388 petition seeking placement of the child in their home. At a combined hearing, the juvenile court denied the grandparents' section 388 petition, selected adoption as the permanent plan, and terminated the parents' rights. Both the father and the grandparents appealed. The grandparents' appeal was dismissed as untimely, and the father's appeal was dismissed based on a lack of standing. The Supreme Court affirmed. (*K.C.*, *supra*, 52 Cal.4th at pp. 234–235.) The *K.C.* court held the father had no standing to appeal the denial of the grandparents' section 388 petition because he did not contest termination of his parental rights and thus "relinquished the only interest in K.C. that could render him aggrieved by

the juvenile court's order declining to place the child with the grandparents." (*K.C.*, *supra*, at p. 238.)

The *K.C.* court explained that whether a parent is aggrieved by a juvenile court's order depends on the parent's interest in the matter and that the parent's interest shifts during the course of the dependency proceedings. (*K.C.*, *supra*, 52 Cal.4th at p. 236.) "All parents, unless and until their parental rights are terminated, have an interest in their children's 'companionship, care, custody and management ….' [Citation.] This interest is a 'compelling one, ranked among the most basic of civil rights.' [Citation.] While the overarching goal of the dependency law is to safeguard the welfare of dependent children and to promote their best interests [citations], the law's first priority when dependency proceedings are commenced is to preserve family relationships, if possible. [Citation.] To this end, the law requires the juvenile court to provide reunification services unless a statutory exception applies. [Citations.] In contrast, after reunification services are terminated or bypassed …, 'the parents' interest in the care, custody and companionship of the child [is] no longer paramount. Rather, at this point, "the focus shifts to the needs of the child for permanency and stability.…" ' [Citations.] For this reason, the decision to terminate or bypass reunification services ordinarily constitutes a sufficient basis for terminating parental rights. (§ 366.26, subd. (c)(1).)" (*Id*. at pp. 236–237.)

The *K.C.* court also explained the consequences of failing to assert the parental interest by raising any of the statutory exceptions to adoption at the section 366.26 hearing. The statutory exceptions to adoption "permit the juvenile court not to terminate parental rights when compelling reasons show termination would be detrimental to the child." (*K.C.*, *supra*, 52 Cal.4th at p. 237; § 366.26, subd. (c)(1).) In *K.C.*, the court stated that, by not asserting any exceptions and acquiescing in the termination of parental rights, the father relinquished the only interest in his child that could render him aggrieved by the juvenile court's order declining to place the child with the grandparents. (*K.C.*, *supra*, at p. 238.)

Here, because mother did not contest the termination of her parental rights in the dependency court, she relinquished the only interest in the children that could have rendered her aggrieved by the juvenile court's order. Thus, even if the relative placement preference applied to Cheyenne, mother lacks standing to raise it on appeal under the reasoning of *K.C.*

Further, mother's theory of how the case might have proceeded had the department placed the children with Cheyenne does not support her standing argument. Had the department accepted her relinquishment and placed the children with Cheyenne, she asserts, she could have maintained a relationship with them through a postadoption contract. Relinquishment, however, results in termination of parental rights and adoption, which is what mother desired for her children, albeit not with the prospective adoptive parents. Nevertheless, by acquiescing to the termination of her parental rights by not challenging the children's adoptability or raising any of the exceptions to adoption, mother relinquished the only interest she had in the children that would render her aggrieved by the termination order.

DISPOSITION

The order is affirmed.